

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Seminole County/City of Casselberry Interlocal Utility Construction
Agreement for Lake Drive Phase I and Phase II

DEPARTMENT: PUBLIC WORKS **DIVISION:** ENGINEERING

AUTHORIZED BY: W. Gary Johnson, P.E., Director **CONTACT:** Kathleen J. Myer, P.E. **EXT.** 5664
Jerry McCollum, P.E., County Engineer

Agenda Date 12/14/04 **Regular** ☐ **Consent** ☒ **Work Session** ☐ **Briefing** ☐
Public Hearing – 1:30 ☐ **Public Hearing – 7:00** ☐

MOTION/RECOMMENDATION:

Approve and authorize the Chairman to execute the Interlocal Utility Construction Agreement with Casselberry for utility construction of the City's water, sanitary sewer and reclaimed water lines on Lake Drive, Phases I and II, between Seminola Boulevard and Tuscawilla Road.

District 1 – Commissioner Dallari (Kathleen J. Myer, P.E.)
 District 2 – Commissioner Morris

BACKGROUND:

Lake Drive will be widened from 2 lanes to 4 lanes via a new alignment that traverses the old dog track property and ties into the existing Lake Drive alignment near Easton Way. The City of Casselberry is requesting the installation of water, sanitary sewer, and reclaimed water lines in the area served by the City concurrently with the County's roadway construction. This will minimize overall construction impacts to the area by combining the construction effort under one contractor for the roadway project. This agreement provides for the construction and inspection of the work by the County's roadway contractor and CEI consultant. Payment for the City's utility work will be by the City. Apportionment of the County's CEI cost is addressed in the agreement for the inspection services provided for the City's work.

Attachments: Location Map
 City Resolution (October 25, 2004)
 Interlocal Agreement

Reviewed by:	<u>JFL</u>
Co Atty:	<u>JFL</u>
DFS:	<u> </u>
Other:	<u> </u>
DCM:	<u> </u>
CM:	<u> </u>
File No.	<u>CPWE01</u>



LAKE DRIVE

RESOLUTION 04-1533

"A RESOLUTION OF THE CITY OF CASSELBERRY, FLORIDA, AUTHORIZING THE EXECUTION OF AN INTERLOCAL UTILITIES CONSTRUCTION AGREEMENT FOR THE CONSTRUCTION OF WATER, SANITARY SEWER AND RECLAIMED WATER MAINS BETWEEN THE CITY OF CASSELBERRY AND SEMINOLE COUNTY FOR THE SEMINOLE COUNTY ROADWAY CONSTRUCTION PROJECT KNOWN AS "LAKE DRIVE PHASE I AND PHASE II"; PROVIDING FOR CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE."

WHEREAS, the parties hereto have the common power to construct utility and roadway facilities and to contract for the performance of such work; and

WHEREAS, the CITY desires, at its own expense, to construct water, reclaimed water and sewer utilities in the COUNTY'S rights-of-way, most of which are located within the COUNTY roadway construction project known as "Lake Drive Phase I and Phase II"; and

WHEREAS, the CITY has requested the COUNTY to include the City Utility Work in the County Project in order to meet the needs of the CITY; and

WHEREAS, the COUNTY is willing to provide such work pursuant to the terms and conditions of the Seminole County/City of Casselberry Interlocal Utility Construction Agreement Lake Drive Phase I and Phase II attached hereto as "Exhibit A"; and

WHEREAS, this Agreement is authorized by the provisions of *Chapters 125, 163 and 166, Florida Statutes*, and other applicable law.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF CASSELBERRY, FLORIDA, AS FOLLOWS:

SECTION I. The City Commission of the City of Casselberry, Florida, hereby approves the Seminole County/City of Casselberry Interlocal Utility Construction Agreement Lake Drive Phase I and Phase II attached as "Exhibit A", and authorizes the Mayor to sign the attached agreement.

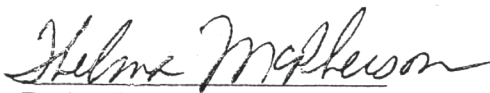
SECTION II. Conflicts. All Resolutions or parts of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION III. Severability. If any Section or portion of a Section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Resolution.

SECTION IV. Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

PASSED and ADOPTED this 25th day of October, AD 2004.

ATTEST:


Thelma McPherson
City Clerk


Bruce A. Pronovost
Mayor/Commissioner

**SEMINOLE COUNTY/CITY OF CASSELBERRY
INTERLOCAL UTILITY CONSTRUCTION AGREEMENT
LAKE DRIVE PHASE I AND PHASE II**

THIS INTERLOCAL AGREEMENT is made and entered into this _____ day of _____, 2004, by and between **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY," and the **CITY OF CASSELBERRY**, a Florida municipal corporation, whose address is 95 Triplet Lake Drive, Casselberry, Florida 32707, hereinafter referred to as "CITY."

W I T N E S S E T H:

WHEREAS, the parties hereto have the common power to construct utility and roadway facilities and to contract for the performance of such work; and

WHEREAS, the CITY desires, at its own expense, to construct water, reclaimed water and sewer utilities in the COUNTY'S rights-of-way, most of which are located within the COUNTY roadway construction project known as "Lake Drive Phase I and Phase II" (the "County Project"); and

WHEREAS, the CITY has requested the COUNTY to include the City Utility Work (as defined in Paragraph 1 below) in the County Project in order to meet the needs of the CITY; and

WHEREAS, the COUNTY is willing to provide such work pursuant to the terms and conditions of this Agreement; and

WHEREAS, this Agreement is authorized by the provisions of Chapters 125, 163 and 166, Florida Statutes, and other applicable law;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged as to both parties, the COUNTY and the CITY agree as follows:

Section 1. General. The CITY has proposed utility construction along the "Lake Drive Phase I and Phase II" corridor consisting of the construction of approximately three thousand five hundred (3,500) linear feet of six-inch (6") water main, five hundred thirty (530) linear feet of eight-inch (8") water main, three thousand nine hundred (3,900) linear feet of twelve-inch (12") water main, four hundred (400) linear feet of four-inch (4") reclaimed water main, seventy (70) linear feet of six-inch (6") reclaimed water main and two thousand one hundred (2,100) linear feet of twelve-inch (12") reclaimed water main. All of the CITY proposed utility construction along Seminola Boulevard and Lake Drive shown on the construction Plans as defined in paragraph 3 below is referred to throughout this Agreement as the "City Utility Work".

Section 2. Rights of Way. The parties acknowledge and agree that all the City Utility Work is to take place within rights of way already acquired by the COUNTY and the CITY and utility easements acquired by the CITY. The COUNTY shall not be obligated to perform any City Utility Work that requires acquisition of any property interests, including temporary construction easements, over and above those acquired by the COUNTY or the CITY. The CITY shall be responsible for acquiring

and paying for any additional rights that may be necessary to complete the City Utility Work.

Section 3. Construction Plans.

(a) Since most of the City Utility Work is in an area where the COUNTY plans to make grade changes for roadway construction and build underground stormwater facilities, including pipelines and appurtenant structures, it is in the best interest of both the CITY and COUNTY to have the City Utility Work and the roadway construction performed under the same construction contract. Accordingly, the CITY, through its consultant, LOCHRANE Engineers ("LOCHRANE") has prepared the design plans for the City Utility Work (the "City Design Plans") and furnished signed and sealed copies of the City Design Plans to the COUNTY. The City Design Plans were prepared on the basis that all City Utility Work can be performed by the COUNTY's roadway contractor. These plans consist of:

PHASE I

SHEET NO.	LATEST DATE	DESCRIPTION
U-1	5/03	Cover Sheet
U-2	5/03	Tabulation of Quantities
U-3 - U-11	5/03	Plan and Profile
U-12 - U-13	5/03	Details

PHASE II

SHEET NO.	LATEST DATE	DESCRIPTION
U-1	5/03	Cover Sheet
U-2	5/03	Tabulation of Quantities
U-3 - U-10	5/03	Plan and Profile
U-11 - U-12	5/03	Details

The CITY also understands and agrees that COUNTY review of the City Design Plans may require the CITY to make minor changes to the plans or submit additional information to COUNTY.

(b) No additional work beyond that specified above shall be done without notification to and concurrence of the CITY, provided, however, that, if in the opinion of the COUNTY's consulting engineer an emergency exists, the consulting engineer may authorize measures which in his professional opinion are reasonably necessary to prevent or mitigate damages which might result from such emergency. Additional work required for the City Utility Work beyond that specified in the construction contract shall be authorized by change order issued in accordance with the procedure set forth herein and shall be paid for in full by the CITY. Any reduction of the cost for the City Utility Work made by change order will reduce the total amount to be paid by CITY to COUNTY.

Section 4. Utility Specifications. The CITY will provide to the COUNTY signed and sealed specifications required for the construction of the City Utility Work. These specifications will include copies of issued permits. These utility specifications will also include submittal requirements, payment application submittal requirements, record drawing requirements, testing requirements, and the two year maintenance bond required to be provided to CITY by COUNTY's contractor. CITY understands COUNTY review of the specifications may require the CITY to make minor changes to the specifications or submit additional information to COUNTY.

Section 5. Permitting. The CITY accepts sole responsibility for obtaining, at CITY expense, all the necessary FDEP, FDOT, and County permits required for the City Utility Work. CITY will not apply for a permit from the COUNTY until COUNTY completes its review of the plans.

Section 6. Bidding and Contract Award. The CITY, through LOCHRANE, will provide to the COUNTY a bid schedule containing bid items (item number and description), unit of measure, and estimated quantity for all major items of the City Utility Work. The bid schedule will be in tabular format, with spaces provided for COUNTY's bidders to fill in unit prices and total prices for each bid item. CITY understands COUNTY review of the bid schedule may require the CITY to make minor changes to the schedule or submit additional information to COUNTY.

(a) All bidding, including bid advertisement, distribution of bid documents, bid opening, evaluation of bidders and award of the contract will be conducted by the COUNTY. The CITY, through LOCHRANE, shall provide written answers to questions from the COUNTY and shall respond as needed to questions raised during the bidding process. Before the actual bid opening, the CITY and LOCHRANE shall not communicate, in any fashion, with any prospective bidder, plan holder, subcontractor or other person, firm or entity regarding the plans and specifications, it being the intent of the parties that all information regarding the bid documents, including the plans and specifications, questions, interpretations, and explanations regarding same shall be processed through the COUNTY.

(b) COUNTY shall provide CITY a copy of all bids received so CITY can evaluate all submitted prices for the City Utility Work and the CITY shall provide input to the COUNTY. CITY understands that the COUNTY intends to award the roadway construction contract to the lowest responsive, responsible bidder, based on the COUNTY's requirements, and that the lowest overall roadway bid will not necessarily include the lowest submitted bid prices for City Utility Work.

(c) The COUNTY shall not award the roadway construction contract until FDEP approval. If FDEP approval is not received within sixty (60) days after determination of the apparent responsive low bidder, then the City Utility Work will automatically be deleted from the contract and the COUNTY's award and contract execution can proceed without including the City Utility Work. The CITY shall be responsible for all additional costs and charges caused by issuance of a change order to reincorporate the City Utility Work into the awarded contract.

(d) Until twenty (20) days after bid opening, the CITY may elect to withdraw the City Utility Work from the process by providing written notice to the COUNTY. From twenty (20) days after bid opening, the CITY may not terminate this agreement without first providing thirty (30) days written notice and paying all costs and expenses incurred by the COUNTY and the COUNTY's contractor on account of the City Utility Work.

Section 7. Administration of Construction Contract. All communication with the COUNTY's contractor during construction shall be through the COUNTY or the COUNTY's designated

Construction Engineering and Inspection Professional Engineer, hereinafter referred to as "CEI Consultant". The CITY and LOCHRANE are authorized to consult with and advise the CEI Consultant during the construction period in relation to the City Utility Work. Construction layout, construction coordination, including coordination with other utilities, and scheduling all work are the sole responsibility of the COUNTY, the CEI Consultant, and COUNTY's Contractor and are not the responsibility of either the CITY or LOCHRANE.

(a) The CEI Consultant shall: (1) schedule and attend the preconstruction meeting, progress meetings, and project closeout meetings with the Contractor; (2) provide on-site inspection services, engineering services, surveys for as built drawings and final quantities; (3) provide construction coordination with subcontractors, surveyors, layout personnel and construction quality control testing personnel, and (4) issue all instructions to the Contractor, coordinate the processing of all contract change orders, process all payment applications, conduct punch list and final inspections of the in-place work to determine if the work is completed substantially in accordance with the plans, specifications and other contract documents.

(b) The CITY's responsibilities during the administration of the contract relate only to the City Utility Work. The CITY and/or LOCHRANE will attend the preconstruction meeting, review and respond to Contractor questions or requests for information and review proposed construction changes. The cost of conflict manholes not included in the original contract shall be the responsibility of

the CITY. The CITY is authorized to consult with and advise the CEI Consultant during the construction period. The CITY shall not issue directions, interpretations, product approvals or denials, grant time extensions, approve payment of claims or in any way administer the actual construction or the associated paperwork directly with the contractor, it being understood and agreed that, in order for any action to be binding upon the COUNTY, such action must be approved and issued by the COUNTY in accordance with the applicable provisions of the contract between the COUNTY and the contractor.

(c) The CITY shall approve all change orders related to the City Utility Work before they are approved by the COUNTY for inclusion in the construction contract. The CITY shall be responsible for payment to the COUNTY for all costs resulting from change orders on the City Utility Work. County shall make all reasonable efforts to accommodate the City's requests for change orders relating to the City Utility Work. In the event of a conflict or dispute relating in any way to the City Utility Work, the COUNTY shall have final authority.

(d) Coordinating and obtaining all required DEP approvals, processes, and notifications will be the sole responsibility of the CITY.

Section 8. Inspection During Construction. At all times the CITY and LOCHRANE shall have the right to non-intrusively inspect the City Utility Work and any and all records relating to the performance of the City Utility Work, the contract administration and all inspections. CITY inspection shall be to

the level that it needs to ensure City Utility Work construction is in compliance with the contract documents; however, compliance with the construction documents will also be judged based on geotechnical testing reports provided by the CEI Consultant and the coordination of construction activities, including the survey and layout of construction. The COUNTY shall, upon request, furnish the CITY three (3) copies of all reports requested by the CITY. Copies of any reports issued by CITY inspectors or LOCHRANE will be provided to the COUNTY and the CEI Consultant.

Section 9. Maintenance of Facilities. During construction, the maintenance of installed City Utility Work is the responsibility of the Contractor. It is anticipated the installation and startup of the City Utility Work will occur prior to completion of the roadway portion of the construction contract. During this period, CITY will be allowed to operate its facilities; however, protection of the completed facilities and maintenance during construction will be the continued responsibility of the Contractor until final contract closeout. If during the course of the work, cessation of utility services occurs it shall not constitute a breach of this Agreement on the part of either party hereto; and neither party shall be liable to the other for damage resulting from such cessation of services. This release of liability shall not be construed to release the contractor awarded the construction contract or any other third party from any liability for any damage from whatever cause whatsoever. Upon completion of the COUNTY construction contract and acceptance of the City Utility work by the CITY's governing

body, and final payment by the CITY, the CITY shall own, control, maintain and be responsible for all of its facilities, in accordance with the terms of any and all utility permit(s).

Section 10. Schedule. Except as to delays covered by the force majeure provisions of the contract between the COUNTY and the contractor, should the City's Utility Work be unduly delayed for any reason, the CITY will be responsible for the cost of any resultant time delays to the COUNTY's roadway portion of the work performed by the Contractor and/or CEI Consultant. If resolution of a time delay impact is not promptly reached or if the road's completion schedule is materially delayed by the City's Utility Work, the COUNTY will issue a change order to the contractor deleting the CITY's unfinished utility work from the contract, and shall immediately notify the CITY.

Section 11. Administrative Agent. The COUNTY is designated as the party to administer this Agreement by and through its departments and officers, consultants and independent contractors.

Section 12. Cost Computation, Payment. The CITY shall pay the COUNTY the actual cost of the City Utility Work, as documented by invoices from the construction contractor to the COUNTY, plus a portion of the cost of the services of the CEI Consultant calculated as hereafter stated.

(a) It is the intent of the parties that all costs of the construction of the City Utility Work, except the CEI Consultant services, including regulatory compliance testing, survey layout, preparation of record drawings, closeout submittals (including

the maintenance bond), be included in the bid price for the City Utility Work. If the COUNTY incurs any cost directly related to performance of the City Utility Work, other than the CEI Consultant services, which was not included in the bid price then those costs shall be included in the amount payable by the CITY upon submission of an invoice supporting the amount thereof.

(b) The CITY portion of the CEI Consultant services shall be that portion of the CEI fee billed to the COUNTY that bears the same ratio that the City Utility Work bears to the total contract price for the road project, including the City Utility Work. Initially, the percentage to be used will be based upon the bid as awarded by the COUNTY. At the conclusion of the project the final percentage will be calculated based upon the final contract amounts as adjusted by change orders, if any. Any difference between the amount paid using the initial percentage and the amount due using the final calculation will be paid by the CITY or the COUNTY, as the case may be, within thirty (30) days after close out of the construction contract. By way of example, if the construction contract as awarded totals \$15,000,000.00 (including the cost of the City Utility Work) and the portion of that amount attributable to the City Utility Work is \$3,000,000.00 then the percentage applied to the CEI billing will be 20 per cent (20%) ($\$3,000,000.00$ divided by $\$15,000,000.00$). The same method will be used to calculate the final CEI percentage except the numbers shall reflect the final contract amounts, including all change orders.

(c) On or before the sixty-second (62nd) day after award of the construction contract the CITY shall deposit with the COUNTY twelve per cent (12%) of the total bid amount for the City Utility Work. These funds shall be held in a separate account and be used to pay the contractor's invoices related to the City Utility Work and the applicable portion of the CEI Consultant's fee. In the event that funds remain in the account after contract closeout, they shall be first credited against any and all other charges payable by the CITY to the COUNTY. Any remainder shall be refunded by the COUNTY to the CITY within thirty (30) days after close out of the construction contract.

(d) Beginning on the first day of the month following receipt of the first invoice from the contractor the COUNTY will issue monthly bills to the CITY for its share of the City Utility Work and CEI Consultant fee, calculated as stated above. All late payments shall be assessed non-refundable interest at a rate of ten percent (10%) per annum.

Section 13. Closeout. After final completion and acceptance of construction of the contractor's work on the City Utility Work and the County Project, the CITY shall be entitled to receive one (1) set of reproducible as-built drawings showing the City Utility Work, provided that the CITY has made all payments required by this Agreement.

Section 14. Duties and Level of Services. All services and work hereunder shall be performed to the satisfaction of the COUNTY or the COUNTY's CEI Consultant, who shall decide all questions, difficulties and disputes of whatever nature which may

arise under or by reason of such services and work, the prosecution and fulfillment of the services and work hereunder, and the character, quality, amount and value thereof; and its decision upon all claims, questions, and disputes shall be final and conclusive with respect to all services and work performed or to be performed.

Section 15. Employee Status. Persons employed by one party in the performance of services and functions pursuant to this Agreement shall have no claim against the other party for pension, worker's compensation, unemployment compensation, civil service or other employee rights or privileges whether granted by operation of law or by policy of the non-employing party.

Section 16. Funding/Termination. The CITY, by approving and executing this Agreement, represents and warrants that sufficient funds are available and have been properly budgeted to pay the anticipated costs of the City Utility Work and a portion of the CEI Consultants fees, all as envisioned by this Agreement. The CITY understands and agrees that it is in the best interest of both parties that the City Utility Work be accomplished simultaneously with the County Project. Accordingly, the CITY may not terminate this Agreement except in the case of a breach of contract by the COUNTY and in accordance with the provisions of this paragraph. To facilitate performance pursuant to this Agreement, each party agrees to provide full cooperation and assistance to the other. Except for failure to make payment, the circumstances whereby the COUNTY may terminate this Agreement and remove the City Utility Work from the County Project are

specified throughout this Agreement and are not subject to the provisions of this paragraph. As to any CITY claim of breach by the COUNTY and as to a COUNTY claim of non-payment by the CITY, the following apply:

(a) Notice. The party making the claim shall provide a written statement of the claim, providing as much detail as is reasonably possible under the circumstances. The other party shall have ten (10) days to remedy the claim or, if the matter cannot be resolved in that time period, to begin resolution thereof and thereafter complete in a timely manner resolution of the claim.

(b) Settlement Discussions. If the dispute is not resolved as a result of the notice provided above, then the managers of the CITY and COUNTY shall meet and attempt to reach a satisfactory resolution.

If the dispute is not resolved between the managers then this Agreement shall be terminated on the seventh (7th) day after the meeting of the managers. In all events the CITY shall reimburse the COUNTY for all costs and expenses incurred through the date of termination, including the amounts payable to the construction contractor and the CEI Consultant.

Section 17. Liability.

(a) To Third Parties. As to the City Utility Work, the CITY shall, to the extent permitted by Florida Law, indemnify and hold the COUNTY harmless from and against all liability, loss, costs, damages, and claims of any kind arising from personal injuries, including death, or property damage suffered by third

parties as a result of the City's Utility Work. The term "third parties" is intended to mean all persons, firms, or other legal entities except the CITY, the COUNTY, the contractor and the CEI Consultant. Contractor's contract and CEI Consultant's contract shall include an indemnity in favor of the CITY, as well as in favor of the COUNTY, for all liability arising from Contractor's work or CEI Consultant's work. In addition, to the extent permitted by law, the CITY shall indemnify the COUNTY, the contractor and the CEI consultant from and against any and all claims related to or arising from the failure of the CITY to obtain necessary easements for the location of the CITY facilities outside the COUNTY's rights of way. Nothing herein shall be construed to waive or expand the provisions and requirements of F.S. §768.28.

(b) To the COUNTY. The CITY shall indemnify and hold the COUNTY harmless from any and all contract claims made by the contractor or the CEI Consultant for damages, extra compensation, profit, overhead expenses, for both home office and field operations, or any other such cost or expense related to or arising from the City Utility Work, it being understood and agreed that the COUNTY is including this work in its construction contract in order to save the CITY time and money and that the COUNTY is essentially acting as the CITY's agent with respect to this work. The CITY shall not be relieved from the obligations imposed by this paragraph on account of any claimed breach of contract by the COUNTY related to this Interlocal Agreement, the contract with the contractor or the contract with the CEI

Consultant, it being the intent of the parties that the CITY shall pay the total amount which may be or become payable on account of any claim covered by this paragraph, leaving open the issue of whether the CITY is entitled to recover any damages from the COUNTY on account of the claimed breach of contract. CITY has the right to participate in any settlement discussions with CEI or Contractor, and may contest any claims by Contractor or CEI Consultant relating to the City Utility Work, so long as CITY pays all costs of litigation, including the judgment. Nothing herein shall be construed to waive or expand the provisions and requirements of F.S. §768.28 regarding tort claims.

(c) These indemnity obligations include any and all charges, expenses and costs, including but not limited to, attorney's fees, both at trial and on appeal, incurred by the COUNTY on account of or by reason of any such damages, liability, claims, suits or losses. In the event the COUNTY is represented by the County Attorney's Office then the amount of attorney's fees shall be calculated using rates charged by attorneys in private practice in the community regardless of the hourly rate actually paid to the attorney or attorneys working on the case.

Section 18. Entire Agreement. It is understood and agreed that the entire Agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions

of this Agreement shall be valid only when expressed in writing and duly signed by the parties.

Section 19. Conflict of Interest. The parties agree that they will not contract for or accept employment for the performance of any work or services with any individual, business, corporation or government unit that would create a conflict of interest in the performance of the obligations of this Agreement.

Section 20. Constitutional and Statutory Limitations on Authority. The terms and conditions of this Agreement are applicable only to the extent they are within and consistent with the constitutional and statutory limitations on the authority of the CITY and the COUNTY. Specifically, the parties acknowledge that the COUNTY and the CITY are without authority to grant or pledge a security interest in the products sold pursuant to this Agreement or any other property, either real or personal, that is owned by the COUNTY or the CITY.

Section 21. Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida and the parties consent to venue in the Circuit Court in and for Seminole County, Florida, as to state actions and the United States District Court for the Middle District of Florida as to federal actions.

IN WITNESS WHEREOF, the parties hereto have made and executed this instrument for the purpose herein expressed.

ATTEST:

CITY OF CASSELBERRY

Thelma L. McPherson

THELMA L. MCPHERSON,
City Clerk

By: Bruce A. Pronovost

Bruce A. Pronovost,
Mayor

Date: October 25, 2004

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

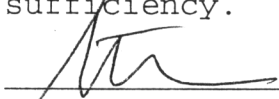
MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
DARYL G. McLAIN, Chairman

Date: _____

For the use and reliance of
Seminole County only. Ap-
proved as to form and legal
sufficiency.

As authorized for execution
by the Board of County
Commissioners at its regular
meeting on _____, 2004.


County Attorney

I:\nah\files\cdr\Casselberry\agreements\Seminole co interlocal - lake dr 9-27-04 clean.doc

**SEMINOLE COUNTY/CITY OF CASSELBERRY
INTERLOCAL UTILITY CONSTRUCTION AGREEMENT
LAKE DRIVE PHASE I AND PHASE II**

THIS INTERLOCAL AGREEMENT is made and entered into this _____ day of _____, 2004, by and between **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY," and the **CITY OF CASSELBERRY**, a Florida municipal corporation, whose address is 95 Triplet Lake Drive, Casselberry, Florida 32707, hereinafter referred to as "CITY."

W I T N E S S E T H:

WHEREAS, the parties hereto have the common power to construct utility and roadway facilities and to contract for the performance of such work; and

WHEREAS, the CITY desires, at its own expense, to construct water, reclaimed water and sewer utilities in the COUNTY'S rights-of-way, most of which are located within the COUNTY roadway construction project known as "Lake Drive Phase I and Phase II" (the "County Project"); and

WHEREAS, the CITY has requested the COUNTY to include the City Utility Work (as defined in Paragraph 1 below) in the County Project in order to meet the needs of the CITY; and

WHEREAS, the COUNTY is willing to provide such work pursuant to the terms and conditions of this Agreement; and

WHEREAS, this Agreement is authorized by the provisions of Chapters 125, 163 and 166, Florida Statutes, and other applicable law;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged as to both parties, the COUNTY and the CITY agree as follows:

Section 1. General. The CITY has proposed utility construction along the "Lake Drive Phase I and Phase II" corridor consisting of the construction of approximately three thousand five hundred (3,500) linear feet of six-inch (6") water main, five hundred thirty (530) linear feet of eight-inch (8") water main, three thousand nine hundred (3,900) linear feet of twelve-inch (12") water main, four hundred (400) linear feet of four-inch (4") reclaimed water main, seventy (70) linear feet of six-inch (6") reclaimed water main and two thousand one hundred (2,100) linear feet of twelve-inch (12") reclaimed water main. All of the CITY proposed utility construction along Seminola Boulevard and Lake Drive shown on the construction Plans as defined in paragraph 3 below is referred to throughout this Agreement as the "City Utility Work".

Section 2. Rights of Way. The parties acknowledge and agree that all the City Utility Work is to take place within rights of way already acquired by the COUNTY and the CITY and utility easements acquired by the CITY. The COUNTY shall not be obligated to perform any City Utility Work that requires acquisition of any property interests, including temporary construction easements, over and above those acquired by the COUNTY or the CITY. The CITY shall be responsible for acquiring

and paying for any additional rights that may be necessary to complete the City Utility Work.

Section 3. Construction Plans.

(a) Since most of the City Utility Work is in an area where the COUNTY plans to make grade changes for roadway construction and build underground stormwater facilities, including pipelines and appurtenant structures, it is in the best interest of both the CITY and COUNTY to have the City Utility Work and the roadway construction performed under the same construction contract. Accordingly, the CITY, through its consultant, LOCHRANE Engineers ("LOCHRANE") has prepared the design plans for the City Utility Work (the "City Design Plans") and furnished signed and sealed copies of the City Design Plans to the COUNTY. The City Design Plans were prepared on the basis that all City Utility Work can be performed by the COUNTY's roadway contractor. These plans consist of:

PHASE I

SHEET NO.	LATEST DATE	DESCRIPTION
U-1	5/03	Cover Sheet
U-2	5/03	Tabulation of Quantities
U-3 - U-11	5/03	Plan and Profile
U-12 - U-13	5/03	Details

PHASE II

SHEET NO.	LATEST DATE	DESCRIPTION
U-1	5/03	Cover Sheet
U-2	5/03	Tabulation of Quantities
U-3 - U-10	5/03	Plan and Profile
U-11 - U-12	5/03	Details

The CITY also understands and agrees that COUNTY review of the City Design Plans may require the CITY to make minor changes to the plans or submit additional information to COUNTY.

(b) No additional work beyond that specified above shall be done without notification to and concurrence of the CITY, provided, however, that, if in the opinion of the COUNTY's consulting engineer an emergency exists, the consulting engineer may authorize measures which in his professional opinion are reasonably necessary to prevent or mitigate damages which might result from such emergency. Additional work required for the City Utility Work beyond that specified in the construction contract shall be authorized by change order issued in accordance with the procedure set forth herein and shall be paid for in full by the CITY. Any reduction of the cost for the City Utility Work made by change order will reduce the total amount to be paid by CITY to COUNTY.

Section 4. Utility Specifications. The CITY will provide to the COUNTY signed and sealed specifications required for the construction of the City Utility Work. These specifications will include copies of issued permits. These utility specifications will also include submittal requirements, payment application submittal requirements, record drawing requirements, testing requirements, and the two year maintenance bond required to be provided to CITY by COUNTY's contractor. CITY understands COUNTY review of the specifications may require the CITY to make minor changes to the specifications or submit additional information to COUNTY.

Section 5. Permitting. The CITY accepts sole responsibility for obtaining, at CITY expense, all the necessary FDEP, FDOT, and County permits required for the City Utility Work. CITY will not apply for a permit from the COUNTY until COUNTY completes its review of the plans.

Section 6. Bidding and Contract Award. The CITY, through LOCHRANE, will provide to the COUNTY a bid schedule containing bid items (item number and description), unit of measure, and estimated quantity for all major items of the City Utility Work. The bid schedule will be in tabular format, with spaces provided for COUNTY's bidders to fill in unit prices and total prices for each bid item. CITY understands COUNTY review of the bid schedule may require the CITY to make minor changes to the schedule or submit additional information to COUNTY.

(a) All bidding, including bid advertisement, distribution of bid documents, bid opening, evaluation of bidders and award of the contract will be conducted by the COUNTY. The CITY, through LOCHRANE, shall provide written answers to questions from the COUNTY and shall respond as needed to questions raised during the bidding process. Before the actual bid opening, the CITY and LOCHRANE shall not communicate, in any fashion, with any prospective bidder, plan holder, subcontractor or other person, firm or entity regarding the plans and specifications, it being the intent of the parties that all information regarding the bid documents, including the plans and specifications, questions, interpretations, and explanations regarding same shall be processed through the COUNTY.

(b) COUNTY shall provide CITY a copy of all bids received so CITY can evaluate all submitted prices for the City Utility Work and the CITY shall provide input to the COUNTY. CITY understands that the COUNTY intends to award the roadway construction contract to the lowest responsive, responsible bidder, based on the COUNTY's requirements, and that the lowest overall roadway bid will not necessarily include the lowest submitted bid prices for City Utility Work.

(c) The COUNTY shall not award the roadway construction contract until FDEP approval. If FDEP approval is not received within sixty (60) days after determination of the apparent responsive low bidder, then the City Utility Work will automatically be deleted from the contract and the COUNTY's award and contract execution can proceed without including the City Utility Work. The CITY shall be responsible for all additional costs and charges caused by issuance of a change order to reincorporate the City Utility Work into the awarded contract.

(d) Until twenty (20) days after bid opening, the CITY may elect to withdraw the City Utility Work from the process by providing written notice to the COUNTY. From twenty (20) days after bid opening, the CITY may not terminate this agreement without first providing thirty (30) days written notice and paying all costs and expenses incurred by the COUNTY and the COUNTY's contractor on account of the City Utility Work.

Section 7. Administration of Construction Contract. All communication with the COUNTY's contractor during construction shall be through the COUNTY or the COUNTY's designated

Construction Engineering and Inspection Professional Engineer, hereinafter referred to as "CEI Consultant". The CITY and LOCHRANE are authorized to consult with and advise the CEI Consultant during the construction period in relation to the City Utility Work. Construction layout, construction coordination, including coordination with other utilities, and scheduling all work are the sole responsibility of the COUNTY, the CEI Consultant, and COUNTY's Contractor and are not the responsibility of either the CITY or LOCHRANE.

(a) The CEI Consultant shall: (1) schedule and attend the preconstruction meeting, progress meetings, and project closeout meetings with the Contractor; (2) provide on-site inspection services, engineering services, surveys for as built drawings and final quantities; (3) provide construction coordination with subcontractors, surveyors, layout personnel and construction quality control testing personnel, and (4) issue all instructions to the Contractor, coordinate the processing of all contract change orders, process all payment applications, conduct punch list and final inspections of the in-place work to determine if the work is completed substantially in accordance with the plans, specifications and other contract documents.

(b) The CITY's responsibilities during the administration of the contract relate only to the City Utility Work. The CITY and/or LOCHRANE will attend the preconstruction meeting, review and respond to Contractor questions or requests for information and review proposed construction changes. The cost of conflict manholes not included in the original contract shall be the responsibility of

the CITY. The CITY is authorized to consult with and advise the CEI Consultant during the construction period. The CITY shall not issue directions, interpretations, product approvals or denials, grant time extensions, approve payment of claims or in any way administer the actual construction or the associated paperwork directly with the contractor, it being understood and agreed that, in order for any action to be binding upon the COUNTY, such action must be approved and issued by the COUNTY in accordance with the applicable provisions of the contract between the COUNTY and the contractor.

(c) The CITY shall approve all change orders related to the City Utility Work before they are approved by the COUNTY for inclusion in the construction contract. The CITY shall be responsible for payment to the COUNTY for all costs resulting from change orders on the City Utility Work. County shall make all reasonable efforts to accommodate the City's requests for change orders relating to the City Utility Work. In the event of a conflict or dispute relating in any way to the City Utility Work, the COUNTY shall have final authority.

(d) Coordinating and obtaining all required DEP approvals, processes, and notifications will be the sole responsibility of the CITY.

Section 8. Inspection During Construction. At all times the CITY and LOCHRANE shall have the right to non-intrusively inspect the City Utility Work and any and all records relating to the performance of the City Utility Work, the contract administration and all inspections. CITY inspection shall be to

the level that it needs to ensure City Utility Work construction is in compliance with the contract documents; however, compliance with the construction documents will also be judged based on geotechnical testing reports provided by the CEI Consultant and the coordination of construction activities, including the survey and layout of construction. The COUNTY shall, upon request, furnish the CITY three (3) copies of all reports requested by the CITY. Copies of any reports issued by CITY inspectors or LOCHRANE will be provided to the COUNTY and the CEI Consultant.

Section 9. Maintenance of Facilities. During construction, the maintenance of installed City Utility Work is the responsibility of the Contractor. It is anticipated the installation and startup of the City Utility Work will occur prior to completion of the roadway portion of the construction contract. During this period, CITY will be allowed to operate its facilities; however, protection of the completed facilities and maintenance during construction will be the continued responsibility of the Contractor until final contract closeout. If during the course of the work, cessation of utility services occurs it shall not constitute a breach of this Agreement on the part of either party hereto; and neither party shall be liable to the other for damage resulting from such cessation of services. This release of liability shall not be construed to release the contractor awarded the construction contract or any other third party from any liability for any damage from whatever cause whatsoever. Upon completion of the COUNTY construction contract and acceptance of the City Utility work by the CITY's governing

body, and final payment by the CITY, the CITY shall own, control, maintain and be responsible for all of its facilities, in accordance with the terms of any and all utility permit(s).

Section 10. Schedule. Except as to delays covered by the force majeure provisions of the contract between the COUNTY and the contractor, should the City's Utility Work be unduly delayed for any reason, the CITY will be responsible for the cost of any resultant time delays to the COUNTY's roadway portion of the work performed by the Contractor and/or CEI Consultant. If resolution of a time delay impact is not promptly reached or if the road's completion schedule is materially delayed by the City's Utility Work, the COUNTY will issue a change order to the contractor deleting the CITY's unfinished utility work from the contract, and shall immediately notify the CITY.

Section 11. Administrative Agent. The COUNTY is designated as the party to administer this Agreement by and through its departments and officers, consultants and independent contractors.

Section 12. Cost Computation, Payment. The CITY shall pay the COUNTY the actual cost of the City Utility Work, as documented by invoices from the construction contractor to the COUNTY, plus a portion of the cost of the services of the CEI Consultant calculated as hereafter stated.

(a) It is the intent of the parties that all costs of the construction of the City Utility Work, except the CEI Consultant services, including regulatory compliance testing, survey layout, preparation of record drawings, closeout submittals (including

the maintenance bond), be included in the bid price for the City Utility Work. If the COUNTY incurs any cost directly related to performance of the City Utility Work, other than the CEI Consultant services, which was not included in the bid price then those costs shall be included in the amount payable by the CITY upon submission of an invoice supporting the amount thereof.

(b) The CITY portion of the CEI Consultant services shall be that portion of the CEI fee billed to the COUNTY that bears the same ratio that the City Utility Work bears to the total contract price for the road project, including the City Utility Work. Initially, the percentage to be used will be based upon the bid as awarded by the COUNTY. At the conclusion of the project the final percentage will be calculated based upon the final contract amounts as adjusted by change orders, if any. Any difference between the amount paid using the initial percentage and the amount due using the final calculation will be paid by the CITY or the COUNTY, as the case may be, within thirty (30) days after close out of the construction contract. By way of example, if the construction contract as awarded totals \$15,000,000.00 (including the cost of the City Utility Work) and the portion of that amount attributable to the City Utility Work is \$3,000,000.00 then the percentage applied to the CEI billing will be 20 per cent (20%) ($\$3,000,000.00$ divided by $\$15,000,000.00$). The same method will be used to calculate the final CEI percentage except the numbers shall reflect the final contract amounts, including all change orders.

(c) On or before the sixty-second (62nd) day after award of the construction contract the CITY shall deposit with the COUNTY twelve per cent (12%) of the total bid amount for the City Utility Work. These funds shall be held in a separate account and be used to pay the contractor's invoices related to the City Utility Work and the applicable portion of the CEI Consultant's fee. In the event that funds remain in the account after contract closeout, they shall be first credited against any and all other charges payable by the CITY to the COUNTY. Any remainder shall be refunded by the COUNTY to the CITY within thirty (30) days after close out of the construction contract.

(d) Beginning on the first day of the month following receipt of the first invoice from the contractor the COUNTY will issue monthly bills to the CITY for its share of the City Utility Work and CEI Consultant fee, calculated as stated above. All late payments shall be assessed non-refundable interest at a rate of ten percent (10%) per annum.

Section 13. Closeout. After final completion and acceptance of construction of the contractor's work on the City Utility Work and the County Project, the CITY shall be entitled to receive one (1) set of reproducible as-built drawings showing the City Utility Work, provided that the CITY has made all payments required by this Agreement.

Section 14. Duties and Level of Services. All services and work hereunder shall be performed to the satisfaction of the COUNTY or the COUNTY's CEI Consultant, who shall decide all questions, difficulties and disputes of whatever nature which may

arise under or by reason of such services and work, the prosecution and fulfillment of the services and work hereunder, and the character, quality, amount and value thereof; and its decision upon all claims, questions, and disputes shall be final and conclusive with respect to all services and work performed or to be performed.

Section 15. Employee Status. Persons employed by one party in the performance of services and functions pursuant to this Agreement shall have no claim against the other party for pension, worker's compensation, unemployment compensation, civil service or other employee rights or privileges whether granted by operation of law or by policy of the non-employing party.

Section 16. Funding/Termination. The CITY, by approving and executing this Agreement, represents and warrants that sufficient funds are available and have been properly budgeted to pay the anticipated costs of the City Utility Work and a portion of the CEI Consultants fees, all as envisioned by this Agreement. The CITY understands and agrees that it is in the best interest of both parties that the City Utility Work be accomplished simultaneously with the County Project. Accordingly, the CITY may not terminate this Agreement except in the case of a breach of contract by the COUNTY and in accordance with the provisions of this paragraph. To facilitate performance pursuant to this Agreement, each party agrees to provide full cooperation and assistance to the other. Except for failure to make payment, the circumstances whereby the COUNTY may terminate this Agreement and remove the City Utility Work from the County Project are

specified throughout this Agreement and are not subject to the provisions of this paragraph. As to any CITY claim of breach by the COUNTY and as to a COUNTY claim of non-payment by the CITY, the following apply:

(a) Notice. The party making the claim shall provide a written statement of the claim, providing as much detail as is reasonably possible under the circumstances. The other party shall have ten (10) days to remedy the claim or, if the matter cannot be resolved in that time period, to begin resolution thereof and thereafter complete in a timely manner resolution of the claim.

(b) Settlement Discussions. If the dispute is not resolved as a result of the notice provided above, then the managers of the CITY and COUNTY shall meet and attempt to reach a satisfactory resolution.

If the dispute is not resolved between the managers then this Agreement shall be terminated on the seventh (7th) day after the meeting of the managers. In all events the CITY shall reimburse the COUNTY for all costs and expenses incurred through the date of termination, including the amounts payable to the construction contractor and the CEI Consultant.

Section 17. Liability.

(a) To Third Parties. As to the City Utility Work, the CITY shall, to the extent permitted by Florida Law, indemnify and hold the COUNTY harmless from and against all liability, loss, costs, damages, and claims of any kind arising from personal injuries, including death, or property damage suffered by third

parties as a result of the City's Utility Work. The term "third parties" is intended to mean all persons, firms, or other legal entities except the CITY, the COUNTY, the contractor and the CEI Consultant. Contractor's contract and CEI Consultant's contract shall include an indemnity in favor of the CITY, as well as in favor of the COUNTY, for all liability arising from Contractor's work or CEI Consultant's work. In addition, to the extent permitted by law, the CITY shall indemnify the COUNTY, the contractor and the CEI consultant from and against any and all claims related to or arising from the failure of the CITY to obtain necessary easements for the location of the CITY facilities outside the COUNTY's rights of way. Nothing herein shall be construed to waive or expand the provisions and requirements of F.S. §768.28.

(b) To the COUNTY. The CITY shall indemnify and hold the COUNTY harmless from any and all contract claims made by the contractor or the CEI Consultant for damages, extra compensation, profit, overhead expenses, for both home office and field operations, or any other such cost or expense related to or arising from the City Utility Work, it being understood and agreed that the COUNTY is including this work in its construction contract in order to save the CITY time and money and that the COUNTY is essentially acting as the CITY's agent with respect to this work. The CITY shall not be relieved from the obligations imposed by this paragraph on account of any claimed breach of contract by the COUNTY related to this Interlocal Agreement, the contract with the contractor or the contract with the CEI

Consultant, it being the intent of the parties that the CITY shall pay the total amount which may be or become payable on account of any claim covered by this paragraph, leaving open the issue of whether the CITY is entitled to recover any damages from the COUNTY on account of the claimed breach of contract. CITY has the right to participate in any settlement discussions with CEI or Contractor, and may contest any claims by Contractor or CEI Consultant relating to the City Utility Work, so long as CITY pays all costs of litigation, including the judgment. Nothing herein shall be construed to waive or expand the provisions and requirements of F.S. §768.28 regarding tort claims.

(c) These indemnity obligations include any and all charges, expenses and costs, including but not limited to, attorney's fees, both at trial and on appeal, incurred by the COUNTY on account of or by reason of any such damages, liability, claims, suits or losses. In the event the COUNTY is represented by the County Attorney's Office then the amount of attorney's fees shall be calculated using rates charged by attorneys in private practice in the community regardless of the hourly rate actually paid to the attorney or attorneys working on the case.

Section 18. Entire Agreement. It is understood and agreed that the entire Agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions

of this Agreement shall be valid only when expressed in writing and duly signed by the parties.

Section 19. Conflict of Interest. The parties agree that they will not contract for or accept employment for the performance of any work or services with any individual, business, corporation or government unit that would create a conflict of interest in the performance of the obligations of this Agreement.

Section 20. Constitutional and Statutory Limitations on Authority. The terms and conditions of this Agreement are applicable only to the extent they are within and consistent with the constitutional and statutory limitations on the authority of the CITY and the COUNTY. Specifically, the parties acknowledge that the COUNTY and the CITY are without authority to grant or pledge a security interest in the products sold pursuant to this Agreement or any other property, either real or personal, that is owned by the COUNTY or the CITY.

Section 21. Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida and the parties consent to venue in the Circuit Court in and for Seminole County, Florida, as to state actions and the United States District Court for the Middle District of Florida as to federal actions.

IN WITNESS WHEREOF, the parties hereto have made and executed this instrument for the purpose herein expressed.

ATTEST:

CITY OF CASSELBERRY

Thelma L. McPherson
THELMA L. MCPHERSON,
City Clerk

By: Bruce A. Pronovost
Bruce A. Pronovost,
Mayor

Date: October 25, 2004

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____

Date: _____

For the use and reliance of
Seminole County only. Ap-
proved as to form and legal
sufficiency.

As authorized for execution
by the Board of County
Commissioners at its regular
meeting on _____, 2004.

Attn

County Attorney

I:\nah\files\cdr\Casselberry\agreements\Seminole co interlocal - lake dr 9-27-04 clean.doc

Lake Drive Re-alignment Water and Reclaimed Water Extensions

